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ARIZONA SUPREME COURT

In the matter of:)	
)	
SUA SPONTE PETITION TO AMEND)	Supreme Court No.
RULES 32, 46-49, 53, 55– 58, AND 60-63,)	R-18-_____
RULES OF THE SUPREME COURT)	
)	
_____)	

At the request of this Court, Petitioner files this *sua sponte* petition pursuant to Supreme Court Rule 28, to request this Court adopt the proposed amendments to the Rules of the Supreme Court of Arizona appearing in the attached Appendix A.

I. Background

The Court has recently adopted changes to various rules clarifying the mission and structure of the State Bar of Arizona. The Court now wishes to clarify the process for appointing and overseeing the functions of Chief Bar Counsel.

II. Pre-Petition Distribution and Comment

The petition was not circulated for pre-petition comments.

III. Effective Date of the Proposed Amendments

Petitioner respectfully requests that the proposed amendments be adopted effective January 1, 2019.

Respectfully submitted this 10th day of January, 2018.

By /s/_____
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Appendix A

(additions are shown by underlining; deletions are shown by ~~strikeouts~~)

RULES OF THE SUPREME COURT OF ARIZONA

* * *

Rule 32. Organization of State Bar of Arizona

(a) State Bar of Arizona. The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law.* Every person licensed by this Court to engage in the practice of law must be a member of the State Bar of Arizona in accordance with these rules.

2. *Mission.* The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and professionalism of lawyers practicing in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its individual members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law by employing and housing bar counsel and overseeing bar counsel's performance of the duties provided in these rules; foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

(b) through (m) [no changes]

Rule 46. Jurisdiction in Discipline and Disability matters; Definitions

(a) Lawyers Admitted to Practice. Any lawyer admitted to practice law in this state is subject to the disciplinary and disability jurisdiction of this court and the authority delegated in these rules to the board of governors of the state bar. Any false statement or misrepresentation made by an applicant for admission to the practice of law which is not discovered until after the applicant is admitted may serve as an independent ground for the imposition of discipline under these rules and as an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for admission to the practice of law may result in revocation of the member's admission to the state bar, pursuant to Rule 33(b) of these rules.

(b) through (e) [no changes]

(f) Definitions. When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers:

1. "Acting presiding disciplinary judge" means an attorney member of a hearing panel designated to serve when the presiding disciplinary judge is disqualified or unable to serve in any matter.
2. "Bar counsel" means staff counsel employed by the state bar or volunteer counsel appointed to represent the state bar in discipline and other proceedings. "Chief bar counsel" means that person who by appointment and under the direction of~~employed by the executive director of the state bar to~~ administers the court's discipline and disability system~~under the direction of the executive director~~.
3. "Board" means the Board of Governors of the State Bar of Arizona.
4. "Charge" means any allegation or other information of misconduct or incapacity that comes to the attention of the state bar.
5. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona.
6. "Complainant" means a person who initiates a charge against a lawyer or later joins in a charge to the state bar regarding the conduct of a lawyer. The complainant will be provided information as set forth in Rule 53, unless specifically waived by the complainant. The state bar or any bar counsel may be complainant.
7. "Complaint" means a formal complaint prepared and filed with the disciplinary clerk pursuant to these rules.
8. "Costs" means all sums taxable as such in a civil action.
9. "Court" means Supreme Court of Arizona.
10. "Discipline" means those sanctions and limitations on members and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include

that status where the context so requires.

11. “Disciplinary clerk” means an individual designated by the court to be the custodian of the record in all discipline, disability, and reinstatement proceedings before the attorney discipline probable cause committee, the presiding disciplinary judge, and the hearing panel, who shall maintain the records according to the common practice of clerks of court.

12. “Discipline proceeding” and “disability proceeding” mean any action involving a respondent pursuant to the rules relating thereto.

13. “Expenses” means all obligations in money, other than costs, necessarily incurred by the state bar, the committee, the hearing panel, the disciplinary clerk’s and the presiding disciplinary judge’s offices in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of committee members, hearing panel members, bar counsel or staff, charges of expert witnesses, charges of certified reporters and all other direct, provable expenses.

14. “Filing” means delivery of the document or exhibit to the disciplinary clerk or clerk of the court, as appropriate, for inclusion in the record, or delivery of the document or exhibit to the state bar counsel for inclusion in the state bar file, as provided for in these rules. All papers, whether filed electronically or in hard copy, shall comply with the requirements of Rule 32(j).

15. “Hearing panel” means the three-member panel that has the powers and duties set forth in Rule 52(h).

16. “Member” means member of the state bar, the classifications of which are set forth in Rule 32(c)(1).

17. “Misconduct” means any conduct sanctionable under these rules, including unprofessional conduct as defined in Rule 31(a)(2)(E) or conduct that is eligible for diversion.

18. “Non-member” means a person licensed to practice law in a state or possession of the United States or a non-lawyer permitted to appear in such capacity, but who is not a member of the state bar.

19. “Presiding disciplinary judge” means the judicial officer appointed by the court to carry out the functions specified in these rules.

20. “Record,” for the purposes of these rules, means the complaint and accompanying committee’s order of probable cause, or other document that commences formal discipline, disability or reinstatement proceedings, or contempt proceedings and every later-filed document, exhibit, or verbatim record of the proceedings.

21. “Respondent” means a member or non-member against whom a discipline or disability proceeding has been commenced.

22. “Settlement officer” means either a paid or a volunteer attorney who presides over a settlement conference.

23. “State bar” means the State Bar of Arizona, created by rule of this court.

24. “State bar file” means the original of every document, recording and transcript of testimony or exhibit created or received by the state bar in relation to a discipline, disability or reinstatement proceeding, but shall not include work product of the state bar or state bar staff, or information protected by any legally recognized privilege in Arizona.

Rule 47. General Procedural Matters

(Text of Rule 47 effective July 1, 2018)

(a) and (b) [no changes]

(c) Service. Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the rules of civil procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

1. *Service of Complaint.* Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule 32(c)(3). When service of the complaint is made by mail, ~~the state bar~~ counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

2. *Service of Subpoena.* [no changes]

(d) through (l) [no changes]

Rule 48. Rules of Construction

(a) through (l) [no changes]

(m) Immunity from Disciplinary Complaint. Members of the board, the members of the committee, the presiding disciplinary judge, an acting presiding disciplinary judge, hearing panel members, settlement officers, bar counsel or attorneys acting under the direction or authority of such persons or the court are immune from any charge or discipline complaint alleging ethical misconduct that arises out of an administrative act performed in the exercise of discretion under the authority granted under these rules. No charge or disciplinary complaint against such persons may be docketed for filing by ~~the state bar~~ counsel or be a part of any person's disciplinary history absent a finding by the committee that the charge or complaint alleges one or more violations of the Rules of Professional Conduct. In the event such a finding is made, the matter shall be docketed but may be stayed by order of the presiding disciplinary judge upon application and a showing of good cause.

Rule 49. Bar Counsel

(a) Appointment of Chief Bar Counsel and Bar Counsel. The chief bar counsel shall be appointed by the executive director, subject to the approval of the supreme court. Chief bar counsel may appoint staff to carry out all discipline functions pursuant to these rules and consistent with the budget authorized by the board and as approved by the executive director.

(b) Oath of Office. All bar counsel shall take an oath of office and file a copy of said oath with the lawyer regulations records manager.

(c) Powers and Duties of Chief Bar Counsel. Acting under the authority granted by the supreme court of the board, and under the direction ~~and by appointment~~ of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member or non-member and for the coordination of such investigations; ~~employ and~~ supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A. Notice to Disciplinary Agencies. Chief bar counsel shall transmit notice of discipline, transfers to or from disability inactive status, reinstatements and judgments of conviction to the disciplinary enforcement agency of any other jurisdiction in which the respondent is known to be admitted. Respondent shall identify each such jurisdiction in writing addressed to the chief bar counsel.

B. Disclosure to National Discipline Data Bank. Chief bar counsel shall transmit notice of all public discipline imposed against a respondent, transfers to or from disability inactive status, reinstatements, and certified copies of any criminal conviction to the National Discipline Data Bank maintained by the American Bar Association's National Lawyer Regulatory Data Bank.

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

- (i) Disbarment, suspension, interim suspension, reprimand, and reinstatement shall be posted for an indefinite period of time.
- (ii) Probation (including admonition with probation), restitution and costs shall be posted for five (5) years from the effective date of the sanction or until completion, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.
- (iii) A finding of contempt of a supreme court order shall be posted for five (5) years from the effective date of the order or until the contempt is purged, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.
- (iv) A transfer to disability inactive status shall be posted while the order is in effect.

(v) An administrative or summary suspension shall be posted while the suspension is in effect.

D. Notice to Courts. Chief bar counsel shall promptly advise all courts in this state of orders or judgments of suspension, disbarment, reinstatement and transfers to or from disability inactive status. In addition, chief bar counsel shall petition the appropriate court to take such action as may be indicated in order to protect the interests of the public, respondent and respondent's clients.

3. Report. At least once per year, chief bar counsel shall report to the chief justice on matters relevant to the performance of the discipline system.

~~(b)~~(d) Powers and Duties of Bar Counsel. Bar counsel shall:

1. Review all information coming to the attention of the state bar. Bar counsel shall exercise discretion in initiating investigations when allegations, if true, would be grounds for discipline or transfer to disability inactive status. Bar counsel may request one or more staff examiners to aid in conducting investigations. Staff examiners shall work under the supervision of staff bar counsel. Staff examiners may be, but need not be members of the state bar and may be selected from the regular employees of the state bar.
2. Recommend dispositions prior to formal proceedings, and, if deemed advisable, recommend any discipline in formal proceedings.
3. In appropriate cases, negotiate dispositions of pending matters as authorized in Rule 57(a) or 58.
4. Promptly notify the complainant and respondent of the disposition of each matter.
5. Represent the state bar in and prosecute discipline and reinstatement proceedings and proceedings for transfer to or from disability inactive status before the presiding disciplinary judge, hearing panels, the committee and this court, and prosecute contempt proceedings in the appropriate forum.
6. Dismiss proceedings if, after conducting a screening investigation, there is no probable cause to believe misconduct or incapacity exists pursuant to these rules.
7. Monitor and supervise respondents during a probationary or diversionary term and, as appropriate, report material violations of the terms of probation or diversion to the presiding disciplinary judge and prepare and forward a report to the imposing entity regarding the respondent's completion of the imposed terms.
8. Monitor and supervise conditional admittees during the conditional admission period, pursuant to Rule 36(a)(2)(C)(ii); and
9. Perform such other duties as the court may direct.

(e) Attorney Discipline Oversight Committee. The Board of Governors shall appoint a board committee to oversee the performance of the disciplinary duties delegated to chief bar counsel. In order to help ensure that the discipline system is adequately protecting the public, the committee shall periodically review the effectiveness, efficiency, and quality of bar counsel's performance. The

committee may meet in executive session to review individual cases if needed to perform its duties. The committee may make recommendations to the executive director and the board regarding bar discipline activities, including staffing levels needed to perform assigned duties.

Rule 53. Complainants

(a) Status of Complainant. The complainant is not a party to discipline, disability or reinstatement proceedings. By becoming a complainant, a person submits himself or herself to the jurisdiction of this court and the state bar counsel for all purposes relating to these rules. In order to receive information as provided by this rule, the complainant must keep the state bar informed of any change of address, telephone number, or e-mail address during the pendency of the investigatory or adjudicatory phase of the proceedings. Notice may be accomplished by mailing or otherwise transmitting the notice to the complainant's last known address.

(b) Information. The following information will be provided to a complainant, by ~~the state bar~~ counsel, concerning charges made against a lawyer:

1. *Respondent's Response.* A copy of respondent's initial response to the charge, if any, except those portions subject to a protective order, will be provided to the complainant.

2. *Dismissal by Bar Counsel.* Bar counsel shall notify the complainant of the dismissal of a charge.

A. Prior to a Screening Investigation. If ~~the state bar~~ counsel dismisses a matter prior to a full screening investigation, bar counsel may notify the complainant of the dismissal by telephone. The complainant may request that the decision to dismiss be reviewed by chief bar counsel or chief bar counsel's deputy.

B. Following a Screening Investigation. If ~~the state bar~~ counsel dismisses a matter following a screening investigation, bar counsel shall mail a notice of dismissal to the complainant. The complainant may object to the dismissal as provided by Rule 55(b)(2)(A)(ii).

3. *Duty to Advise Complainant of Proceedings.* ~~The state~~ Bar counsel shall advise the complainant of a recommendation of any discipline, diversion, or pending agreement for discipline by consent. It shall also provide written notice of the hearing on the merits before a hearing panel, and of any public proceeding before the presiding disciplinary judge or the court. ~~The state~~ Bar counsel shall provide information to enable the complainant to ascertain the date, time and location of such proceedings, which may include the website address of ~~the state bar~~ counsel or the disciplinary clerk. In the case of an agreement for discipline by consent, the complainant shall also be notified of the opportunity to file a timely written objection and to be heard at any hearing concerning the agreement. A complainant's written objection to an agreement for discipline by consent must be submitted to ~~the state bar~~ counsel within five (5) business days of ~~bar counsel's~~ such notice. Bar counsel shall submit the complainant's objection to the presiding disciplinary judge and serve a copy on respondent or respondent's counsel.

4. *Final Disposition.* Complainants shall receive notice of the final disposition of each matter.

(c) Failure to Provide Information. The ultimate disposition of any disciplinary proceedings shall not

be affected by the failure of ~~the state bar~~ counsel to provide the complainant with information as required by subsection (b) of this rule.

Rule 55. Initiation of Proceedings; Investigation

(a) Commencement; Determination to Proceed. ~~The state~~ Bar counsel shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity.

1. If ~~the state~~ bar counsel determines the lawyer is not subject to the disciplinary jurisdiction of the supreme court, ~~it~~ bar counsel shall refer the information to the appropriate entity.

2. If ~~the state~~ bar counsel determines the lawyer is subject to the disciplinary jurisdiction of the court, ~~it~~ bar counsel shall, in the exercise of ~~its~~ bar counsel's discretion, resolve the matter in one of the following ways:

A. dismiss the matter with or without comment; or

B. enter into a diversion agreement or take other appropriate action without conducting a full screening investigation where warranted ; or-

C. refer the matter for a screening investigation as provided in Rule 55(b) if the alleged conduct may warrant the imposition of a sanction.

(b) Screening Investigation and Recommendation by ~~the State Bar~~ Counsel. When a determination is made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that he or she is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by ~~the state bar~~ counsel until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* The respondent shall provide a written response to the allegations to bar counsel within twenty (20) days after notice of the investigation is given.

A. Extensions of Time. Bar counsel may grant one extension of time to file a written response not to exceed twenty (20) days. Any additional requests for extensions of time must be approved by chief bar counsel for good cause shown.

B. Failure to Respond. If respondent fails to timely respond as provided in these rules, bar counsel may seek an investigative subpoena pursuant to Rule 47(h)(1) to compel respondent's attendance and production of documents. Respondent may be subject to contempt proceedings pursuant to Rule 47(h)(4) if he or she refuses to appear or comply with the subpoena.

2. *Action Taken by ~~the State Bar~~ Counsel.*

A. Dismissal.

(i) Notice. After conducting a screening investigation, if there is no probable cause to believe that misconduct or incapacity under these rules exists, bar counsel shall dismiss the charge, with or without comment, by filing a notice of dismissal with the Records Manager of the Lawyer Regulation Office of the state bar. Within twenty (20) days of dismissal of a charge, bar counsel shall provide a written explanation of the dismissal to the complainant.

(ii) Review by Committee. If bar counsel dismisses the charge, the complainant may, within ten (10) days of receipt of the explanation of dismissal, submit to the Records Manager of the Lawyer Regulation Office of the state bar an objection to bar counsel's decision, which shall be reviewed by the committee. Objections shall be referred to the committee for decision. The committee shall review the matter and make a determination as provided in subsection (c) below; provided, however, that the committee shall sustain the dismissal unless it constituted an abuse of discretion. The committee may, rather than sustaining or overturning a dismissal, direct bar counsel to conduct further investigation. When the committee sustains a dismissal, it shall furnish the complainant a written explanation of its determination.

B. Recommendation Other than Dismissal. If, after investigation, bar counsel determines a recommendation for diversion, stay, probation, restitution, admonition, assessment of costs and expenses, or probable cause is appropriate, bar counsel shall provide to the complainant and to respondent a written explanation of the recommendation. Bar counsel shall inform the complainant of the right to submit a written objection, and the respondent of the right to submit a summary of the response to the charges, not to exceed five (5) pages. Such documents shall be filed with the Records Manager of the Lawyer Regulation Office of the state bar within ten (10) days of receipt of the explanation. The Records Manager ~~state bar~~ shall submit complainant's objection, if any, to the committee along with bar counsel's report of investigation and recommendation.

(c) Decision by Committee. Any recommendation by ~~the state bar~~ counsel for a disposition other than dismissal shall be reviewed by the committee.

1. *Action Taken by the Committee.* The committee shall review the report, the complainant's objection, if any, and respondent's summary of the response to the charges, if any, and:

- A. direct bar counsel to conduct further investigation;
- B. dismiss the allegations and furnish the complainant with a written explanation of its determination;
- C. refer the matter to diversion as provided in Rule 56;
- D. make a finding that probable cause exists and order an admonition, probation, restitution, assessment of costs and expenses, or a stay; or
- E. authorize bar counsel to prepare and file a complaint against the respondent or a petition for transfer to disability inactive status.

2. *Considerations in Authorizing Complaint.* In determining whether to authorize bar counsel to file a complaint, the committee shall first determine whether probable cause exists, and if so, shall consider

the following:

- A. whether it is reasonable to believe that misconduct warranting discipline can be proven by clear and convincing evidence;
 - B. whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings;
 - C. the level of the actual or potential injury; and
 - D. whether the respondent has previously been disciplined or participated in diversion.
3. *Filing of Committee Decision.* The committee shall file its decision with the Records Manager of the Lawyer Regulation Office of the state bar. The Records Manager ~~state bar~~ shall serve a copy of the decision on respondent or respondent's counsel.

4. *Disposition Prior to Formal Complaint.*

- A. Subject to the terms of this subsection, a decision of the committee shall be final with respect to dismissal, diversion, stay, admonition, assessment of costs and expenses, probation, restitution, and the filing of formal discipline or disability proceedings. Orders of diversion, stay, admonition, probation, restitution, and assessment of costs and expenses shall be signed by the committee chair or vice-chair.
- B. Within ten (10) days of service of an order of diversion, stay, probation, restitution, admonition, or assessment of costs and expenses entered by the committee, respondent has the right to demand that a formal proceeding be instituted by filing a demand with the committee and submitting a copy to bar counsel. Upon receipt of the demand, the committee shall issue an order vacating the earlier order and directing bar counsel to file a complaint with the disciplinary clerk for institution of formal proceedings. The committee shall serve a copy of the order on bar counsel of record and the respondent or respondent's counsel.
- C. A recommendation of any sanction that is consented to by respondent, pursuant to Rule 57(a), before or while the matter is pending before the committee, other than those made final by decision of the committee, shall be submitted directly to the presiding disciplinary judge for review.

Rule 56. Diversion

(a) Alternative to Discipline. Diversion is an alternative to formal discipline and may be imposed for a specified period not in excess of two (2) years, but may be renewed for an additional two (2) year period. The terms of the diversion agreement will be stated in writing, and may include restitution and assessment of costs and expenses.

(b) Referral to Diversion. Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to the attorney, based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and

supreme court websites. Where the conduct so warrants, diversion may be offered if:

1. the lawyer committed professional misconduct, is incapacitated, or does not wish to contest the evidence of misconduct and the ~~state~~-bar counsel and the respondent agree that diversion will be appropriate;
2. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;
3. the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through alternative programs or mechanisms, including:
 - A. medical, psychological, or other professional treatment, counseling or assistance,
 - B. appropriate educational courses or programs,
 - C. mentoring or practice monitoring services,
 - D. dispute resolution programs, or
 - E. any other program or corrective course of action agreed upon by ~~the state~~ bar counsel and respondent to address respondent's misconduct;
4. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and
5. the terms and conditions of the diversion plan can be adequately supervised.

(c) Diversion agreement or order. If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney and ~~the state~~ bar counsel. If bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

(d) Reinstatement of Discipline Proceeding. A discipline matter shall be held in abeyance during diversion. If a respondent violates a term of diversion, bar counsel may reinstate the discipline proceeding and go forward with the proceeding as provided in these rules.

(e) Dismissal. After successful completion of diversion under these rules, the matter shall be dismissed by bar counsel or by order of the committee, the presiding disciplinary judge, a hearing panel, or the court. Dismissal under this rule shall not preclude ~~the state~~ bar counsel from using the fact of an order of diversion and the facts of the underlying matter in other discipline proceedings, except that the order

shall not be considered as a prior disciplinary offense in aggravation.

Rule 57. Special Discipline Proceedings

(a) Discipline by Consent

1. *Consent to Discipline.* A respondent against whom a charge has been made or a complaint has been filed may tender, with the agreement of ~~the state~~ bar counsel, a conditional admission to the charge or complaint or to a particular count in exchange for a stated form of discipline, other than disbarment, at any stage of the proceedings.

2. through 5. [no changes]

(b) [no changes]

Rule 58. Formal Proceedings

(a) Complaint. Formal discipline proceedings shall be instituted by ~~the state~~ bar counsel filing a complaint or agreement for discipline by consent with the disciplinary clerk. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

1. *Form.* The complaint and all subsequent pleadings filed before the presiding disciplinary judge should be captioned as set forth below:

BEFORE THE PRESIDING DISCIPLINARY JUDGE

In the Matter of a Member)

of the State Bar of Arizona,)

(Name))

Bar No. 000000)

2. *Service of Complaint.* ~~The state~~ Bar counsel shall serve the complaint upon the respondent within five (5) days of filing and in the manner set forth in Rule 47(c). Upon receipt of the complaint and notice that ~~the state bar~~ counsel has served the complaint upon the respondent, the disciplinary clerk shall assign the matter to the presiding disciplinary judge and advise the respondent in writing of respondent's right to retain counsel.

(b) through (d) [no changes]

(e) Initial Disclosure Statements. ~~The state~~ Bar counsel, within ten (10) days after the answer is filed, and respondent, within thirty (30) days after the answer is filed, shall each serve upon the other an initial disclosure statement. The initial disclosure statement shall include the following:

1. the names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at the hearing with a description of each witness' expected testimony;
2. the names and addresses of all persons whom the party believes may have knowledge or information relevant to the matter and the nature of the knowledge or information each such individual is believed to possess;
3. the names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements;
4. the name and address of each person whom the disclosing party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert;
5. the existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use at the hearing, including documentation of prior discipline ~~the state~~ bar counsel may seek to introduce;
6. a list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party intends to introduce at the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure if not previously provided. If production is not made, the name and address of the custodian of the document will be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business;
7. the existence of prior discipline or a prior course of conduct;
8. evidence in aggravation or mitigation that may be presented at hearing;
9. the factual and legal bases upon which the respondent may rely at hearing to contest the allegations in the complaint.

(f) [no changes]

(g) Settlement Conference. After an answer has been filed and respondent is not otherwise in default, the disciplinary clerk shall assign the matter to a settlement officer, not otherwise assigned to the matter, who shall conduct at least one (1) conference for the purpose of facilitating settlement of the case, unless both parties agree otherwise. The settlement officer shall serve upon ~~the state~~ bar counsel and the

respondent a notice of date and place of the settlement conference. Failure of a respondent to participate in good faith in a duly noticed settlement conference may be construed as a violation under Rule 54(d).

1. and 2. [no changes]

(h) through (k) [no changes]

Rule 60. Disciplinary Sanctions

(a) Types and Forms of Sanctions. Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment.* Disbarment may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge.

2. *Suspension.* Suspension may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge for an appropriate fixed period of time not in excess of five (5) years. Suspended members shall remain suspended until the court enters an order reinstating the member to the practice of law in Arizona or upon order of the presiding disciplinary judge pursuant to Rule 64(e)(2)(B).

3. *Reprimand.* A reprimand may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge.

4. *Admonition.* An admonition may be imposed by judgment and order of the court, a hearing panel, the presiding disciplinary judge, or the committee.

5. *Probation.* Probation may be imposed by order of the court, a hearing panel, the presiding disciplinary judge, or the committee as follows:

A. Probation shall be imposed for a specified period not in excess of two (2) years, but may be renewed for an additional two (2) year period.

B. Probation may be imposed only in those cases in which there is little likelihood that the respondent will harm the public during the period of probation, and the conditions of probation can be adequately supervised. The conditions of probation shall be stated in writing, shall be specific, understandable and enforceable, and may include restitution and assessment of costs and expenses.

C. The state bar shall be responsible for monitoring and supervising the respondent during the probationary period. ~~The state Bar~~ counsel shall report material violations of the terms of probation to the presiding disciplinary judge by filing a notice of noncompliance with the disciplinary clerk and serving respondent with a copy of the notice. The notice of noncompliance shall include a verification or separate affidavit upon personal knowledge stating sufficient facts to support the allegations of material violations of the terms of probation. Respondent shall have ten days after service of the notice to file a response. Upon filing the notice of noncompliance, the presiding disciplinary judge may i) issue an order declining to proceed with the notice; ii) issue an order setting the matter for status

conference; or iii) issue an order setting a hearing within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. In a probation violation hearing, the state bar must prove a violation by a preponderance of the evidence. At the end of the probation term, bar counsel shall prepare and forward a notice to the presiding disciplinary judge regarding the respondent's completion or non-completion of the imposed terms.

6. *Restitution.* Restitution may be imposed by order of the committee, the presiding disciplinary judge, the hearing panel, or this court to persons financially injured, including reimbursement to the state bar client security fund. Restitution and the amount thereof must be proven by a preponderance of the evidence.

(b) Assessment of the Costs and Expenses. An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon a respondent by the committee, the presiding disciplinary judge, the hearing panel, or the court, as appropriate, in addition to any other sanction imposed. Upon a showing of good cause, all or a portion of the costs and expenses may be reduced, deferred, or waived.

1. *Statement of Costs and Expenses; Objections.* At the conclusion of the disciplinary proceedings or the entry of a disciplinary sanction by the presiding disciplinary judge or the hearing panel, ~~the state bar counsel~~ shall file an itemized statement of costs and expenses on proven or admitted counts and shall serve a copy on respondent and the disciplinary clerk.

2. *Procedure.*

A. Upon Final Order of the Presiding Disciplinary Judge or the Hearing Panel. If the disciplinary sanction ordered by the presiding disciplinary judge or the hearing panel is not appealed, ~~the state bar counsel~~ shall file a final statement of costs and expenses with the disciplinary clerk within five (5) days after the time to appeal has expired. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. The respondent shall file any objections to the statements of costs and expenses within ten (10) days of service. ~~The state bar counsel~~ may file a response within five (5) days of service of the objection. Unless otherwise ordered, objections shall be determined on the pleadings without oral argument or an evidentiary hearing. The presiding disciplinary judge or the hearing panel shall rule on any objections to costs and expenses, enter an appropriate order, file the same with the disciplinary clerk, and serve a copy on the bar counsel of record and respondent or respondent's counsel. The respondent or state bar may appeal a decision on the assessment of costs and expenses as set forth in Rule 59.

B. Upon Final Order of the Court. Upon final order of the court affirming or imposing any disciplinary sanction, ~~the state bar counsel~~ shall file a final statement of costs and expenses with the clerk of the court within five (5) days after the clerk has given notice that a decision has been rendered. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. Respondent may file an objection to the statement of costs and expenses within ten (10) days of service. ~~The state bar counsel~~ may file a response within five (5) days of service of the objection. If respondent objects, the court may remand the matter to the presiding disciplinary judge or the hearing panel for determination as provided in subparagraph (2)(A) of this rule.

(c) Enforcement. Execution and other post-judgment remedies may issue out of and proceed before the

superior court as in civil cases for the enforcement of any judgment entered in this court under these rules. Such matters shall be docketed in the superior court without filing fee as though the complaint had originally been filed in that court.

Rule 61. Interim Suspension

(a) and (b) [no changes]

(c) Procedure.

1. *Conviction of a Crime.* Upon conviction of a lawyer of any crime, the clerk of the court in which the conviction is entered shall, within twenty (20) days thereafter, transmit to the disciplinary clerk and to the state bar a certified copy of the judgment of conviction, and the convicted lawyer shall, within twenty (20) days after entry of judgment of conviction of a misdemeanor involving a serious crime or of any felony, provide the following information to chief bar counsel: (a) name, bar number and address of record with the state bar, and a current address if different from the address of record; (b) the name of the court in which the judgment of conviction was entered; (c) the case or file number in which the judgment of conviction was entered; and (d) the date the judgment of conviction was entered.

A. *Felony Conviction.* A lawyer shall be suspended after the disciplinary clerk's receipt of proof of the lawyer's conviction of a felony under either state or federal law, regardless of the pendency of post conviction motions or an appeal, unless within ten (10) days of the clerk's receipt of proof of the conviction the member files with the presiding disciplinary judge a verified motion showing good cause why the suspension should not be entered. The presiding disciplinary judge may permit the lawyer to present oral argument in support of the lawyer's motion and shall promptly grant or deny it. If the motion is denied, the lawyer shall be suspended as of the date the motion is denied. If the motion is granted, the lawyer shall not be suspended pending completion of a disciplinary proceeding based on such conviction.

B. *Serious Misdemeanor Conviction.* A lawyer convicted of a serious crime other than a felony may be suspended, upon motion of ~~the state bar~~ counsel, pending final disposition of a disciplinary proceeding predicated upon the conviction. Within ten (10) days of ~~the state bar~~ counsel filing a motion, respondent may file with the presiding disciplinary judge a verified response showing good cause why respondent should not be suspended. The presiding disciplinary judge may permit respondent to present oral argument in support of the respondent's response and shall promptly grant or deny the motion. If the motion is granted, the lawyer shall be suspended as of the date of such order.

C. *Reinstatement.* If a lawyer suspended solely under the provisions of sections (A) or (B) demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically terminate any proceeding then pending against the lawyer, the disposition of which shall be determined on the basis of the available evidence.

2. *All other grounds for interim suspension.* ~~The state Bar~~ counsel may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or

separate affidavit upon personal knowledge stating sufficient facts to support the requested suspension, and shall include a copy of any related hearing panel decision.

A. Service of Motion; Response. Upon filing of the motion, the presiding disciplinary judge shall issue an order requiring ~~the state bar~~ counsel to serve the motion and the presiding disciplinary judge's order on respondent. The motion and order shall be served within five (5) days, as appropriate under Rule 47(c), including service by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent to the state bar's membership records department pursuant to Rule 32(c)(3). Respondent shall file a response to the motion within ten (10) days of service of the motion.

B. Hearing. After receiving the response or after the time for filing a response has passed, the presiding disciplinary judge may rule on the motion or order an evidentiary hearing. If an evidentiary hearing is ordered, it shall be held within ten (10) days of the order. The state bar shall have the burden of establishing probable cause that the basis of the requested relief exists and that interim suspension is appropriate. The presiding disciplinary judge is not bound by common law or rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice. Respondent shall have the right to present evidence, cross-examine witnesses, and be represented by counsel. Within five (5) days after the matter is deemed submitted or a hearing is held, the presiding disciplinary judge shall file a decision and an order.

C. Interim Probation. The presiding disciplinary judge may order interim probation terms in lieu of interim suspension. The state bar shall be responsible for monitoring the respondent's compliance with any order of interim probation entered under these rules. The state bar may seek relief from material violations of the terms of probation by filing with the presiding disciplinary judge a motion supported by affidavit setting forth sufficient grounds. The state bar shall have the burden of proving by a preponderance of the evidence a material violation. The presiding disciplinary judge may hold a hearing promptly to determine whether a violation occurred, and whether the interim probation should be reaffirmed, modified, or revoked, or whether interim suspension should be imposed.

D. Status Review. After the entry of an order of interim suspension or interim probation, the state bar must expeditiously proceed with any related disciplinary investigation and proceeding. The presiding disciplinary judge may order any necessary measures, including but not limited to setting deadlines and holding regular status reviews, to ensure the state bar's compliance with this provision.

(d) and (e) [no changes]

Rule 62. Summary Suspension by the Board of Governors of the State Bar

(a) [no changes]

(b) Procedure. ~~The state Bar~~ counsel shall provide a request for summary suspension to the board stating the grounds for and referring to the rule authorizing the order. A copy of the request shall be served on the member by certified mail, return receipt. One request may relate to more than one member. Within ten (10) days of service of the request upon the member, the member may file with the board a verified response showing good cause why the member should not be so suspended. The board

may permit the member to present oral argument and shall grant or deny the state bar's request. Upon satisfaction that the state bar has shown a prima facie case under the rule referred to, the board shall enter an order of summary suspension, which ~~the state bar~~ counsel shall mail to the respondent within ten (10) days of entry of the order.

(c) and (d) [no changes]

Rule 63. Transfer to Disability Inactive Status

(a) through (c) [no changes]

(d) Status of Pending Disciplinary Proceedings.

1. *Incapacity to Discharge Duty.* An order transferring a lawyer to disability inactive status based on a finding that a lawyer is unable to discharge his or her duties to clients, the bar, the courts or the public does not affect any pending disciplinary proceedings, which shall continue, or if previously stayed, shall resume. Upon a showing of good cause, however, the presiding disciplinary judge or the court may order that all pending discipline proceedings be stayed. If pending discipline cases are stayed, any investigation may continue and testimony may be taken and other evidence preserved pending further proceedings. If information comes to the attention of bar counsel that good cause no longer supports the stay, the stay may be reviewed according to the procedure set forth for an order to show cause in paragraph (d)(3) of this rule.

2. *Competency to Assist in Defense.* If the presiding disciplinary judge or this court determines a lawyer is not competent to assist in the lawyer's own defense, discipline proceedings shall be stayed, and the lawyer placed or retained on disability inactive status until an application for transfer to active status is filed and subsequently granted. If, after the filing of a petition for order to show cause pursuant to paragraph (d)(3) of this rule, a decision that the lawyer is competent to assist in the lawyer's own defense becomes final, the temporary order of transfer to disability status shall be vacated by the presiding disciplinary judge or the court and the discipline proceedings shall resume.

3. Order to Show Cause.

A. *Petition.* In the case of a lawyer who has been transferred to disability inactive status, if information comes to the attention of the state bar indicating that good cause no longer exists to maintain a stay imposed pursuant to paragraph (d)(1) of this rule, or that the lawyer appears no longer to be incompetent and a stay imposed pursuant to paragraph (d)(2) of this rule is no longer appropriate, ~~the state bar~~ counsel shall file with the disciplinary clerk a petition for order to show cause.

B. *Hearing.* The presiding disciplinary judge shall issue an order requiring the lawyer to show cause why an existing stay of pending discipline proceedings imposed upon a showing of good cause or upon a finding of incompetency should not be lifted. The only issue to be addressed at the hearing is whether such a stay should be lifted.

C. *Decision and Order of presiding disciplinary judge.* The presiding disciplinary judge shall, as soon as practicable, prepare and file with the disciplinary clerk a decision containing findings of fact and an

order concerning whether the stay should be lifted. The presiding disciplinary judge shall also serve a copy of the decision and order on the parties. Any such order is subject to appellate review by the court. If an order is entered finding that an existing stay is no longer supported by good cause, or if an order is entered finding that a lawyer is no longer incompetent, and if the time to appeal has expired, any stayed discipline proceedings shall resume.

D. Appeal and Review. Appeal from the presiding disciplinary judge's order shall be as set forth in paragraphs (c)(6) of this rule. If the court accepts the presiding disciplinary judge's finding that an existing stay is no longer supported by good cause or that a lawyer is no longer incompetent, any stayed discipline proceedings shall resume.

(e) through (g) [no changes]